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**Federal Communications Commission
Office of the Secretary**

(202) 887-1400

MINNEAPOLIS, MADRID

file

January 17, 1991

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FM EXAMINERS

**JAN 21 2 13 PM '92
ADMINISTRATIVE SERVICES**

**Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554**

**Re: Steven L. Gradick, Application for
Construction Permit for New FM Broadcast
Station for Bowdon, Georgia to Operate on
Channel 288A, FCC File No. 911031MD**

Dear Ms. Searcy:

Transmitted herewith, in triplicate, is an Amendment to an application for a construction permit for a new commercial broadcast station to be located at Bowdon, Georgia. This Amendment is being filed as of right, pursuant to §73.3522 of the Commission's Rules.

Any questions concerning the enclosed material may be directed to this office.

Very truly yours,


Audrey P. Rasmussen

**APR/dlh
Enclosures**

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AMENDMENT REQUEST

Federal Communications Commission
Office of the Secretary

Re: File No(s): 911031MD

It is requested that the above-identified application(s) be amended to include the attached material.

Any questions concerning the application(s) may be directed to our counsel:

Audrey P. Rasmussen, Esquire
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006
(202) 887-1431

Respectfully submitted,


Steven L. Gradick

Attachment

0007r-2

Pending Proceeding

On December 18, 1991, a judgment was entered in the Superior Court of Haralson County in the state of Georgia, for Civil Action No. 91-291. See attached. In this Order, Steven L. Gradick was found to have libeled James M. Carlisle ("Carlisle"). However, only monetary damages of \$2,000.00, plus costs and interest were awarded to Carlisle, due to mitigating facts. No award was given for slander.

IN THE SUPERIOR COURT FOR THE COUNTY OF HARRISON
STATE OF GEORGIA

JAMES M. CARLISLE,

Plaintiff

vs.

CIVIL ACTION

STEVEN L. GRADDICK,
an individual, and
STEVEN L. GRADDICK, as
president of WKNG, Inc.

FILE NO. 91-291

GEORGIA

Harrison Superior Court

Final December 18th 1991

Mary Ann Shockey
Clerk Superior Court

JUDGMENT

This case is before the court for a non-jury trial upon a complaint for damages based upon allegations of the plaintiff that the defendant has libeled and slandered him.

Plaintiff and defendant were formerly business partners in the operation of a radio station. Because of financial difficulties defendant refused to sign company checks necessary to pay operating costs. Plaintiff then began to operate the station on a cash basis, which included the cashing of company checks and payment of compensation to employees without making the requisite withholdings. This was done without the consent of defendant, as was plaintiff's making a number of loans from individuals in the community on behalf of the partnership. The parties had many differences during their business relationship.

It was the desire of plaintiff to purchase the defendant's interest in the business, and the defendant was willing to sell. Plaintiff, however, was unable to obtain financing which would permit him to purchase the defendant's interest in the business. Eventually defendant caused a legal action to be filed which

resulted in a consent order entered November 4, 1987. The consent order allowed plaintiff the opportunity to purchase defendant's interest in the partnership. Plaintiff was again unable to obtain financing and, pursuant to the consent order, withdrew from the partnership. Plaintiff's withdrawal from the partnership is evidenced by an agreement dated November 27, 1987. Defendant's Exhibit 37. In this agreement plaintiff agreed ". . . that he will in no way interfere (sic) with the operation of WKNG radio . . . and will no longer oppose [defendant] for control of WKNG." Defendant agreed to assume all obligations of WKNG and to release plaintiff from any responsibility or obligation of WKNG.

After plaintiff's withdrawal from the partnership, at least two actions were filed against the parties for obligations arising during the time plaintiff was general manager of the business. As a result of these actions, judgments were entered against the parties. Apparently because of the November 27, 1987 agreement, however, the defendant was found ultimately liable for the obligations. Plaintiff, apparently frustrated by his inability to purchase the radio station and by being named as a party in two lawsuits for partnership obligations from which he felt he had been released by virtue of the November 27, 1987 agreement, began a series of written communications with the Federal Communications Commission (FCC), as evidenced by Defendant's Exhibit 40. It is of interest to note that plaintiff's letter dated February 2, 1988, to the FCC stated that plaintiff was forced by court order to transfer his interest in the station license to defendant. The court order was actually a consent order that confirmed a settlement between the parties of the

issues raised in that action. Plaintiff initially sought to prevent the license issued to the parties from being transferred to defendant as required by the consent order of November 27, 1987. Plaintiff's communications to the FCC continued until he became aware of a letter dated July 27, 1989, and sent by defendant's attorney to plaintiff's then employer, another radio station located in the same area as WKNG.

The letter of July 27, 1989 is the basis of plaintiff's libel claim against defendant. Plaintiff's Exhibit 1 and Defendant's Exhibit 43. This letter contained a statement that plaintiff's complaints to the FCC were "frivolous and defamatory." Certain of plaintiff's complaints to the FCC were in fact true, as admitted by defendant. Defendant caused the letter to be written out of an utter sense of frustration.

Plaintiff presented evidence at trial in support of his slander claim. Two witnesses presented evidence of statements made by the defendant to them which, if false, would constitute slander. Each witness related that the statements were made upon the premises of WKNG and were made ". . . too many times to keep count." These two witnesses were biased against the defendant. The defendant presented witnesses whose testimony tended to refute that of the plaintiff's witnesses. Two of the defendant's witnesses are presently part-time employees of WKNG while the other two are past employees.

The letter of July 27, 1989 would cause a radio station not to hire the plaintiff. Plaintiff's business reputation was damaged as a result of the publication of the letter of July 27, 1989.

FINDINGS OF FACT

1. In weighing the evidence and considering the credibility of the witnesses, the court finds that the plaintiff has failed to establish his claim of slander by a preponderance of the evidence.
2. Plaintiff's communications to the FCC were not all frivolous and defamatory.
3. The letter of July 27, 1989 injured the plaintiff in his occupation.
4. Plaintiff's communications to the FCC were made for the principal purpose of harassing the defendant.
5. Plaintiff's communications to the FCC were contrary to the spirit, letter and intent of the agreement of November 27, 1987.
6. Although the letter of July 27, 1989 was false and malicious, there is an absence of actual malice in the defendant's conduct.


CONCLUSIONS OF LAW

The defendant has libeled the plaintiff, and plaintiff is entitled to recover damages from defendant. Mitigating facts justify only an award of nominal damages. The plaintiff is not entitled to recover for slander.

IT IS HEREBY ORDERED AND ADJUDGED that plaintiff have and recover from the defendant the sum of two thousand dollars (\$2,000.00), together with costs and legal interest from date.

This 17th. day of December, 1991.

Copies mailed to:
Frank Jones
James M. Carlisle



Judge, Superior Court
Tallahassee Judicial Circuit